IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13332 of 2003
with
SPECIAL CIVIL APPLICATION NO.12828 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANSHYAMBHAI DAHYABHAI PATEL

Versus

STAET OF GUJARAT

Appearance:

1. Special Civil Application No. 13332 & 12828 of 2003
MR HR PRAJAPATI for Petitioner No. 1
MS PANCHAL AGP for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 06/11/2003

COMMON ORAL JUDGEMENT

1. By way of filing these Special Civil Application, the petitioner - Ghanshyambhai Dahyabhai Patel in both

the petitions has challenged the order of detention passed against him by the District Magistrate, Anand, on 23.7.2003 in exercise of powers under sub-Section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act) directing the detention of the petitioner and the petitioner came to be detained in pursuance of the said order on 24th July, 2003.

2. It is necessary to make it clear that Special Civil Application No.13332 of 2003 has been preferred by the petitioner - Ghanshyambhai Dahyabhai Patel through his learned advocate Mr H.R. Prajapati while Special Civil Application No.12828 of 2003 has been preferred by the petitioner-detenu for the same detention order referred to above as party-in-person through jail and therefore both these Special Civil Applications are tagged together. In Special Civil Application No.13332 of 2003 a statement is made in the pleadings that no other petition is preferred by the petitioner in any other Court but by making a statement, the learned advocate for the petitioner, Mr Prajapati makes it clear that he was not aware of filing of Special Civil Application No.12828 of 2003 by the petitioner as a party-in-person through jail nor the petitioner conveyed this fact to him. In the circumstances, it appears that filing of an application by the petitioner through jail, which is numbered of Special Civil Application No.12828 of 2003, appears to be bona fide mistake on the part of the petitioner.

3 The grounds served upon the petitioner and as placed on record reveal that the petitioner was a licence holder of distribution of kerosene, which is essential commodity along with Piplav Cooperative Society and Isanov Cooperative Society through public distribution system. The petitioner, resident of Piplav, was expected to distribute kerosene at subsidised rates through public distribution system for which he was authorised. On 31st May 2003 at 6.00 hours the Mamlatdar, Sujitra, inspected the record and shop of the petitioner and it was found that in 21 ration cards without crediting the quantity of kerosene the bills for selling the kerosene were prepared. It was also found in respect of two ration card holders that though distribution of kerosene was noted in the ration card only once, the bills were prepared twice. In May, 2003 proper entries in the ration cards for the distribution of the kerosene had not been made and the kerosene was not distributed. Even then, the bills for the sale of kerosene in this respect

were prepared by the petitioner, which involved about 80 liters of kerosene. This checking was carried out by the Mamlatdar in presence of panchas and in the land bearing Block No.69 which belonged to the petitioner, at 1.30 hours and it was found that the petitioner was in possession of 1760 liters of blue coloured kerosene, which is meant for ration-card holders through public distribution system at a subsidised price. After necessary enquiry the order impugned in the Special Civil Application came to be passed against the petitioner.

4. Learned Advocate Mr.H.R. Prajapati for the petitioner, learned AGP Ms.Mita Panchal, for the respondents No.1, 2 and 3 and learned Additional Central Government Standing Counsel Ms. Davawala for respondent No.4 were heard at length. The affidavit-in-reply filed on behalf of respondents nos.1 and 2 and placed on record and the affidavit-in-reply filed on behalf of respondent no.4 are taken into consideration.

5. On going through the grounds served upon the petitioner it is found that vide paragraph 6 of the grounds it is mentioned that a criminal complaint before Sujitra Police Station on 23rd July, 2003 was preferred by the Deputy Mamlatdar against the petitioner for the above said illegalities committed by him. It is also mentioned in the grounds that in pursuance of such registration of crime the petitioner was arrested. Thereafter the detaining authority reached to the subjective satisfaction that though the petitioner was arrested but the offence registered against him was a bailable offence and he was likely to be released on bail and is likely to indulge in said illegal activities. In this respect the affidavit filed by the detaining authority makes it clear that the order of detention came to be passed on 23rd July, 2003 and that the petitioner came to be released by the court competent on the same day and therefore the fact that the petitioner was released on bail on 23rd July, 2003 could not be mentioned in the grounds. True, it is, that on this count for not conveying to the petitioner that he was released on bail it cannot be said that the detaining authority did not apply its mind properly but the order of detention vitiates on the ground that the detaining authority reached to the subjective satisfaction in this respect grounding his satisfaction on the fact that the offence committed by the petitioner under the Essential Commodities Act was bailable and therefore he was likely to be released on bail. Undoubtedly, the offence which is registered against the petitioner is a non-bailable offence. Nothing prevents the detaining authority to

come to the subjective satisfaction that in non-bailable offences also the detenu was likely to be released on bail and was likely to continue his illegal activities but in that case the detaining authority should arrive at such subjective satisfaction on cogent material. While in this case the order of detention vitiates only because the detaining authority came to the conclusion that the offence registered against the petitioner was bailable one and therefore he was likely to be released on bail. This reflects improper application of mind on the part of the detaining authority so as to vitiate the order and therefore further detention of the petitioner becomes bad in law. The detention order in question is required to be quashed and set aside only on this ground.

6. In the result, this Special Civil Application No.13332 of 2003 is allowed. The order impugned in this Special Civil Application passed on 23.7.2003 by the District Magistrate, Anand, under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS permitted.

7. In view of the above order passed in Special Civil Application No.13332 of 2003, Special Civil Application No.12828 of 2003 stands disposed of. Rule stands discharged accordingly with no order as to costs.

(J.R. Vora, J.)

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